

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 316 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ISMAILBHAI R LAKDAVADA

Versus

HASANBHAI IBRAHIMBHAI

Appearance:

MR JR NANAVATI for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/09/2000

ORAL JUDGEMENT

1. This appeal, under section-100 of the Code of Civil Procedure, is preferred by the appellant, original plaintiff in Regular Civil Suit No. 45 of 1979 in the Court of Civil Judge (J.D.) of Dabhoi, who had preferred

that suit for recovery of an amount of Rs.3302.73 ps. which came to be dismissed with costs by the Civil Judge (J.D.), Dabhoi by judgement and decree dated 11th February, 1982. The said judgement and decree was challenged in the Court of District Judge at Vadodara by preferring a Regular Civil Appeal No.225 of 1982 under section-96 of the Code of Civil Procedure which also came to be dismissed. The said judgement, therefore, is challenged by the appellant by preferring this appeal.

2. The facts leading to the present appeal can be briefly narrated thus :

The plaintiff had preferred the suit to recover an amount of Rs.3302.73 ps. with running interest over the principal amount against the respondent-original defendant. The respondent denied the claim of the plaintiff and additionally took a plea of the suit being time barred. The Trial Court after considering the evidence led by the rival sides, ultimately, dismissed the suit. In the first appeal against that order, a plea was taken on behalf of the appellant that the plaintiff was not afforded adequate opportunity of leading evidence. The first Appellate Court negatived this contention and upheld the judgement of the Trial Court.

3. While admitting this appeal, this Court formulated following substantial question of law :

"Whether in the facts and circumstances of the case, the trial court was justified in denying the opportunity to lead the evidence to the appellant ?"

4. The learned Advocate, Shri J.R. Nanavati, appearing for the appellant has taken this Court through the judgements of both the Courts below. He submitted that the Court below has committed an error of not considering the error of not granting opportunity to the plaintiff by denying the application of the appellant for adjournment and therefore, the appeal may be allowed.

5. Having gone through the judgements, it is amply clear that the plaintiff had summoned his witness by getting a summons issued. However, the witness did not remain present. The plaintiff therefore, sought adjournment by preferring application, Exh.63. The Trial Court after considering the facts and circumstances of the case rejected this application. It is also clear that thereafter, the plaintiff tendered a Purshis, Exh.64, closing the evidence. Therefore, the First Appellate Court came to a conclusion that once the

plaintiff-appellant chose to close the evidence, it cannot be said that he was not afforded opportunity of leading the evidence. On the contrary, filing of the Purshis indicated that the plaintiff was not keen to examine the witness.

6. In view of this, no interference is required at the hands of this Court in this Second Appeal, considering the scope of the Second appeal envisaged in section-100 of the Code of Civil Procedure. It cannot be said that opportunity was not given to the plaintiff to lead evidence. Under what circumstances, the application for adjournment was rejected does not appear from the record. The order of rejection of adjournment application was not challenged by the plaintiff/appellant before higher forum. On the contrary, Purshis declaring closure of evidence of plaintiff's side was tendered. This Court does not find any perversity in the judgement impugned herein.

7. Under the circumstances, the question formulated by this Court while admitting the appeal has to be replied in affirmative. The appeal deserves dismissal and the same is, therefore, dismissed. No costs.

(A.L. Dave, J.)

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